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Court-Appointed Monitor

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, ANTHONY )  
 OCAMPO, ENCARNACION GUTIERREZ, )  
 JOHAN MONTOYA, JUANCARLOS GÓMEZ- )  
 MONTEJANO, JENNIFER LU, AUSTIN CHU, )  
 IVY NGUYEN, ANGELINE WU, ERIC FIGHT, )  
 CARLA GRUBB, DAVID CULPEPPER, )  
 PATRICE DOUGLASS, and ROBAIR )  
 SHERROD, BRANDY HAWK and ANDRE )  
 STEELE, on behalf of themselves and all others, )

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

ELIZABETH WEST and JENNIFER LU, )

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

EQUAL EMPLOYMENT OPPORTUNITY )  
 COMMISSION, )

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

CASE NOS.: 03-2817 SI, 04-4730 and  
 04-4731

**EXECUTIVE SUMMARY OF  
 COURT-APPOINTED MONITOR'S  
 FIRST ANNUAL COMPLIANCE  
 REPORT**

**I. REQUIREMENTS OF CONSENT DECREE**

The Consent Decree provides for the preparation of an Executive Summary of the Court-Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the substance of the Monitor's findings" with respect to Abercrombie's<sup>1</sup> compliance with the requirements of the Consent Decree for the applicable period. The Consent Decree goes on to describe the Executive Summary as follows: "The parties contemplate that the Executive Summary will reflect the Monitor's general findings in areas such as, but not limited to, training, recruitment, creation of job analyses and descriptions, and attainment of Benchmarks, all as more specifically covered by the Report, and the parties also contemplate that the Executive Summary will not include specific findings as to, inter alia, the numbers of applications, hires, promotions, or specific occurrences or events. By way of example, the Executive Summary's discussion of the Company's training could generally set out the Monitor's findings relative to whether the Company had or had not met its overall training objectives under the Decree over the subject reporting period, and, if not, a general statement of matters with respect to which there had been non-compliance and any steps the Company is to take to resolve such matters." What follows is the Monitor's Executive Summary, with topics listed in the order presented in the Consent Decree.

**II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

The Monitor found that Abercrombie's marketing materials, taken as a whole, had not yet achieved the breadth of diversity required by the Consent Decree. The Consent Decree requires that Abercrombie's marketing materials "reflect diversity, as reflected by the major racial/ethnic minority populations of the United States." Generally, the Company's marketing materials reflected some diversity with respect to African Americans, but did not reflect Latino or Asian

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<sup>1</sup> This Executive Summary incorporates herein by reference the definition of "Abercrombie" contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie & Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc; and Abercrombie & Fitch Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors, agents, management, successors and assigns and those in active concert or participation with them, or any of them. The terms of [the Consent] Decree cover all stores operated by Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other concept operated by Abercrombie."

1 American models to the degree necessary to warrant a finding of generally reflecting diversity.  
 2 Indeed, of the approximately 100 employees interviewed by the Monitor, the most frequent  
 3 observation made by store personnel was that the images used in the Company's marketing  
 4 materials were not diverse.

5 To achieve full compliance with this obligation, Abercrombie should redouble its efforts  
 6 to include African American, Asian American, and Latino images in the full range of marketing  
 7 materials so that those materials, taken as a whole, reflect diversity.

### 8 **III. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CREATION OF** 9 **OFFICE OF DIVERSITY**

10 The Monitor found that Abercrombie met the Consent Decree's overall objectives with  
 11 regard to the creation of the Office of Diversity. Abercrombie selected a highly qualified and  
 12 skilled individual to serve as its Vice President of Diversity and to lead its Office of Diversity.  
 13 The Office of Diversity has at its disposal the resources necessary to discharge the Office of  
 14 Diversity's duties and make compliance with the Consent Decree's objectives possible.  
 15 Abercrombie has provided the Office of Diversity and its Vice President with sufficient access to  
 16 executive management and other departments within the Company.

### 17 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING NOTICE AND** 18 **POSTING**

19 The Monitor found that Abercrombie met most of the Notice and Posting requirements as  
 20 set forth in the Consent Decree. The vast majority of Abercrombie stores have Exhibit B Notices  
 21 posted. A small percentage of Abercrombie stores do not have Exhibit B Notices posted or have  
 22 Exhibit B Notices posted in locations not readily visible. Abercrombie should ensure that all  
 23 Exhibit B Notices are posted in readily visible locations, as required by the Consent Decree.

24 The HR 411 Bulletin republished the Exhibit B Notice every four (4) months, as required  
 25 by the Consent Decree. The Associate Handbooks for each brand were revised to include a  
 26 statement that informs employees that Abercrombie entered into a Consent Decree, that the  
 27 Company agreed to undertake actions demonstrating its commitment to diversity and equal  
 28

1 employment opportunity, that each store posted an Exhibit B Notice, and that a summary of the  
2 Consent Decree was available on a particular website, all as required by the Consent Decree.

3 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY**  
4 **TRAINING**

5 The Monitor found that Abercrombie developed EEO and Diversity Training programs,  
6 as required by the Consent Decree. However, Abercrombie did not provide the training to all  
7 managerial, home office, or human resources employees within the required time period.  
8 Abercrombie did not develop a system to adequately track whether and when all incumbent,  
9 newly hired, or recently promoted managerial, home office, and human resources employees  
10 received the training. Abercrombie has committed to the Monitor that it would develop systems  
11 to track training for managerial, home office, and human resources employees. Going forward,  
12 Abercrombie must provide confirmation that the Company provided EEO and Diversity Training  
13 to all managerial, home office, and human resources employees within the time periods and in  
14 the manner specified by the Consent Decree.

15 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL**  
16 **COMPLAINT PROCEDURE**

17 The Monitor found that Abercrombie developed and implemented the Internal Complaint  
18 Procedure, as required by the Consent Decree. The Monitor also found that the Internal  
19 Complaint Procedure was adequately publicized through the Exhibit B Notices and the Associate  
20 Handbooks. Although the Company developed a process to collect each incoming complaint,  
21 the Company did not respond promptly to every complaint received, as required by the Consent  
22 Decree. To remedy this problem, Abercrombie has refined its complaint collection process to  
23 ensure that the process allows for prompt responses to each complaint. Additional attention to  
24 prompt responses should be a priority in the upcoming compliance period. The Monitor also  
25 found that Abercrombie adequately tracked complaints once an investigation was initiated.  
26 Moreover, the Monitor found that investigations were conducted in a timely manner once  
27 assigned for investigation. With respect to the Company's resolution of complaints received via  
28 the Internal Complaint Procedure, the Monitor found that complaints were generally resolved to

1 the complainant's satisfaction. The Monitor found that Abercrombie instituted policies to  
2 maintain records regarding the resolution of complaints received through the Internal Complaint  
3 Procedure, as required by the Consent Decree.

4 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING PERFORMANCE**  
5 **EVALUATIONS**

6 The Monitor found that Abercrombie adequately revised its Performance Evaluation  
7 forms for store management employees, as required by the Consent Decree.

8 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING JOB ANALYSIS AND**  
9 **JOB CRITERIA**

10 The Monitor found that Abercrombie developed written job analyses and job-related  
11 criteria for each in-store position, as required by the Consent Decree.

12 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND**  
13 **HIRING**

14 The Monitor found that Abercrombie generally complied with the terms of the Consent  
15 Decree with respect to the development of a Recruitment and Hiring Protocol to recruit and hire  
16 for all hourly, in-store positions and the Manager-in-Training position. Abercrombie's  
17 Recruitment and Hiring Protocol, however, does not contain an affirmative requirement that  
18 Abercrombie seek qualified African American, Asian American, and Latino applicants of both  
19 genders.

20 Abercrombie did not comply with the Consent Decree's requirement that all involved  
21 staff be trained within sixty (60) days of the adoption of the Recruitment and Hiring Protocol.  
22 While Abercrombie provided training in the Recruitment and Hiring Protocol to District  
23 Managers and most Store Managers within the prescribed time period, Abercrombie has not yet  
24 trained all Store Managers and has not yet provided training to any Assistant Managers or  
25 Managers-in-Training. Abercrombie must promptly train all involved staff, including all Store  
26 Managers, Assistant Managers, and Managers-in-Training, to be in compliance with the  
27 requirements of the Consent Decree.  
28

1 Abercrombie makes non-managerial job descriptions available so that potential  
2 applicants are made aware of the differences among positions, as required by the Consent  
3 Decree.

4 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL**  
5 **PROMOTIONS**

6 Abercrombie promoted the targeted numbers of African American, Asian American,  
7 Latino, and female managers to most managerial positions. However, Abercrombie did not  
8 promote sufficient numbers of African American Assistant Managers to the Store  
9 Manager/General Manager positions. To comply with the requirements of the Consent Decree,  
10 Abercrombie must renew its efforts to promote African American managers "in a proportion that  
11 is no less than the specific group's proportion of the available feeder pool."

12 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY**  
13 **RECRUITERS**

14 The Monitor found that Abercrombie hired the agreed-upon number of Diversity  
15 Recruiters, and that Abercrombie based an adequate number of those Diversity Recruiters in  
16 major metropolitan areas, as required by the Consent Decree. Abercrombie was also charged  
17 with using Best Efforts<sup>2</sup> to ensure that its Diversity Recruiters reflect diversity in race/national  
18 origin and gender. More than half of the Company's Diversity Recruiters are female. Although  
19 a significant percentage of the Diversity Recruiters are African American, the percentages of  
20 Asian Americans and Latinos are too small to warrant a finding that the Diversity Recruiters  
21 generally reflect diversity. Abercrombie should redouble its efforts to ensure that the Diversity  
22 Recruiters hired reflect diversity in race and national origin.

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26 <sup>2</sup> This Executive Summary incorporates herein by reference the definition of "Best Efforts"  
27 contained in the Consent Decree: "'Best Efforts' means implementing and adequately funding a  
28 plan reasonably designed to comply with all the specific objectives to which the best efforts are  
directed."



1 The Consent Decree also states that “Abercrombie will ... charge[] [its Diversity  
2 Recruiters] with recruiting Minority<sup>[3]</sup> applicants, including female applicants of each Minority,  
3 who meet Minimal Eligibility Requirements into in-store positions.” The Recruiter job  
4 description does not include the word “diversity” in its job title, nor does it specifically charge  
5 the Diversity Recruiters with recruiting African American, Asian American, and Latino  
6 candidates of both genders. While the Diversity Recruiters may be orally instructed to recruit  
7 qualified Minority applicants, Abercrombie should take all steps necessary to ensure that the  
8 Diversity Recruiters are charged pursuant to the terms of the Consent Decree.

9 Finally, the Consent Decree states that Abercrombie “will consider both external and  
10 internal candidates” for the Diversity Recruiter position. Thus far, all of the Diversity Recruiters  
11 hired have been internal candidates. Indeed, the Recruiter job description states that a candidate  
12 must currently be at least a Store Manager at Abercrombie. For the upcoming compliance  
13 period, Abercrombie should undertake an external recruiting effort when hiring any additional  
14 Diversity Recruiters and/or filling any vacant Diversity Recruiter positions. Alternatively,  
15 Abercrombie should seek modification of this provision from Lead Counsel and the EEOC if the  
16 Company believes that objectives of this provision are being attained by alternative means.

## 17 **XII. SUBSTANCE OF MONITOR’S FINDINGS REGARDING ADVERTISEMENTS**

18 The Monitor found that Abercrombie did not sufficiently advertise for in-store  
19 employment opportunities in periodicals or other media that targeted African Americans, Asian  
20 Americans, and/or Latinos of both genders, as called for in the Consent Decree. Abercrombie  
21 should increase its efforts to place advertisements for in-store employment opportunities in  
22 periodicals or other media that target these Minority Groups, or seek modification of this  
23 provision should Abercrombie be able to convince Lead Counsel and the EEOC that the  
24 objectives of this provision are being attained by other efforts.

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27 <sup>3</sup> This Executive Summary incorporates herein by reference the definition of “Minority”  
28 contained in the Consent Decree: “‘Minority’ means all African Americans, Asian Americans,  
and Latinos. ‘Minority Group’ means each of these three groups.”

1 **XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITING**  
2 **EVENTS**

3 The Monitor found that Abercrombie generally satisfied the requirement that the  
4 Company attend Minority job fairs and recruiting events that are attended by African American,  
5 Asian American, and Latino individuals of both genders.

6 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY**  
7 **CONSULTANT**

8 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity  
9 and inclusion training for "all field-based managers and selected home office personnel."  
10 Abercrombie did not utilize a Diversity Consultant to aid in identifying sources of qualified  
11 African American, Asian American, and Latino candidates of both genders, as called for in the  
12 Consent Decree. Abercrombie should utilize a Diversity Consultant to aid in identifying sources  
13 of qualified Minority candidates, or seek modification of this provision should Abercrombie be  
14 able to convince Lead Counsel and the EEOC that the objectives of this provision are being  
15 attained by other efforts.

16 **XV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DOCUMENTATION**

17 The Monitor found that Abercrombie generally complied with the Consent Decree's  
18 requirement that the Company provide documentation regarding its placement of advertisements  
19 for in-store opportunities. However, Abercrombie did not provide information regarding the size  
20 of the advertisements and, in some instances, the target audience of the publication in which the  
21 advertisements were placed. To comply with the requirements of the Consent Decree,  
22 Abercrombie should provide documentation regarding all advertisements for in-store  
23 opportunities. Such documentation should include the publication in which the advertisement  
24 was placed, the publication's target audience, and the size, time, and duration of the  
25 advertisement.

26 The Monitor found that Abercrombie did not comply with the Consent Decree's  
27 requirement that the Company provide documentation regarding the Diversity Recruiters'  
28 attendance at job fairs and recruiting events targeted towards African Americans, Asian



1 Americans, and Latinos. Abercrombie should provide, at a minimum, documentation setting  
2 forth descriptions of all job fairs or recruiting events attended, including the places, dates, and  
3 target audiences.

4 **XVI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING**  
5 **BENCHMARKS**

6 The Monitor found that Abercrombie complied with the requirements of the Consent  
7 Decree in terms of implementing and establishing Hiring Benchmark rates for each six-month  
8 compliance period.

9 The Company met all Company-wide Hiring Benchmarks set for the first six-month  
10 period. However, in the second six-month period, Abercrombie did not meet most Company-  
11 wide Hiring Benchmarks. With respect to the second six-month period's Hiring Benchmarks for  
12 the Brand Representative position, Abercrombie met the Hiring Benchmark set for women.  
13 Abercrombie did not meet the second-six month period's Brand Representative Hiring  
14 Benchmarks set for Asian Americans, African Americans, Latinos, or African American women.  
15 With respect to the second six-month period's Hiring Benchmarks for the Manager-in-Training  
16 position, Abercrombie met the Hiring Benchmarks set for African Americans and women.  
17 Abercrombie did not meet the second-six month period's Manager-in-Training Hiring  
18 Benchmarks set for Asian Americans or Latinos. Abercrombie has developed a plan to achieve  
19 all of its upcoming Benchmarks. The effectiveness of that plan will be assessed during the next  
20 compliance period.

21 **XVII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING REPORTING,**  
22 **RECORDKEEPING, AND COMPLIANCE MEETINGS**

23 The Monitor found that Abercrombie generally complied with the reporting,  
24 recordkeeping, and compliance meeting requirements set forth in the Consent Decree. The  
25 Company timely provided all reports required under the terms of the Consent Decree. The  
26 Company also instituted policies regarding the preservation of documents as required by the  
27 Consent Decree. The Company engaged in compliance meetings pursuant to the terms of the  
28 Consent Decree.

**XVIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-ANNUAL PROGRESS REPORTS**

Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Monitor found that the Semi-Annual Progress Reports included most of the materials and information required pursuant to the Consent Decree. Going forward, the Company should address the following areas in its Semi-Annual Progress Reports:

- (1) An analysis of the hiring shortfalls in the Company's divisions of less than 80% of the Company-wide rates;
- (2) Confirmations from all of the District Managers that the Exhibit B Notices were posted;
- (3) Copies of all recruitment materials with an indication as to whether the image depicts a former or current Abercrombie associate;
- (4) An analysis of the Diversity VP's activities with respect to the Internal Complaint Procedure;
- (5) An analysis of the Diversity VP's activities with respect to Advertisements;
- (6) An analysis of the Diversity VP's activities with respect to the use of a Diversity Consultant;
- (7) An analysis of the Diversity VP's activities with respect to providing EEO and Diversity Training to all necessary associates;
- (8) Documentation of the Diversity Recruiters' recruiting efforts;
- (9) Copies of all purchased advertising;
- (10) Copies of all images used on the Company's websites; and
- (11) Copies of any videos (e.g., A&F "New Faces" videos or operations videos).

Dated: August 25, 2006

Fred W. Alvarez

By: 

Fred W. Alvarez  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

Court-Appointed Monitor